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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

LESLIE GORDON SMITH,

Defendant and Appellant.

A123878

(Contra Costa County
Super. Ct. No. 05-080076-3)

I. INTRODUCTION

Defendant Leslie Gordon Smith appeals from his conviction, following a no contest plea, of one count of violating Penal code section 288, subdivision (a).¹ His counsel has filed an opening brief pursuant to *People v. Wende*,² in which no issues are raised, and asks this court for an independent review of the record. Counsel declares he notified defendant he could file a supplemental brief raising any issues he wished to call to this court's attention. No supplemental brief has been filed. Upon independent review of the record, we find no arguable issues are presented for review and affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

In June 2007, Officer Mathew Summers, a patrol officer with the Antioch Police Department, interviewed Jane Doe, who was eight years old at the time. Doe told Summers defendant, a relative, frequently stayed with her and her sister while their

¹ All further statutory references are to the Penal Code.

² *People v. Wende* (1979) 25 Cal.3d 436; see also *People v. Kelly* (2006) 40 Cal.4th 106.

mother was out of the house to run errands or go to meetings. Doe described an incident where defendant told her it was time to take a bath, accompanied her into the bathroom and insisted on helping her remove her clothes, despite Doe telling him she did not need any help. Doe, naked, and defendant were in the bathroom when her mother returned. Other than accidental contact, defendant did not touch Doe during this incident.

Three days later, Summers received a voice message from Doe's mother asking him to contact her. Summers returned to their house, and Doe related numerous other times when defendant had engaged in sexual conduct with and around her. He asked to see her "privates"; sometimes he forcibly touched them under her clothing. During the several months defendant watched her and her sister, he had touched her vaginal area and breasts numerous times. One time, he inserted his finger into her vagina. He asked her to touch his penis; one time he forcibly made her do so after she had refused. He twice masturbated and ejaculated in front of her. Doe told Summers she had not previously told him about these incidents because she feared that if she did, she would "get in trouble" with the officer.

Six days after the second interview, Doe was interviewed at the Children's Interview Center (CIC) in Martinez. The interview was recorded and observed by Tarra McBroom, who was then a sexual assault detective with the Antioch Police Department. Doe related incidents of defendant touching her "privates," licking her vaginal area, making her touch his penis, asking her to suck his penis, and kissing her. Detective McBroom recognized there were some differences in what Doe related to Officer Summers and the CIC interviewer, but did not think this was unusual under the circumstances. She also was not surprised that Doe admitted (when asked whether she knew the difference between telling the truth and telling a lie) to having lied to her mother, nor did she think that meant Doe could fairly be characterized as a "liar."

Defendant was arrested and then interviewed by Officer Summers and Corporal Trevor Schnitzius. Prior to commencing the interview, defendant was read his

Miranda rights.³ Defendant agreed to speak to the officers without counsel. During the interview he admitted to masturbating while at Doe's house, but denied ever telling Doe to watch and claimed she might have walked in on him. Defendant also told the officers he had been registering as a sex offender.

Doe was charged by felony information with one count of violating section 288.5 (continuous sexual abuse of a child) and one count of violating section 290 (failure to register as a sex offender). At the conclusion of the preliminary hearing, the prosecution asked that defendant be held to answer to multiple counts of a lesser charge, section 288, subdivision (a). The trial court dismissed both charged counts for insufficient evidence, but ordered defendant held to answer on three counts of violating section 288, subdivision (a) (committing a lewd act upon a child under the age of 14).

In a subsequent information, defendant was charged with two counts of violating section 288.7 (sexual acts with a child under 10 years of age), one count of violating section 288, subdivision (b)(1) (forcible lewd act on a child under 14 years of age), and four counts of violating section 288, subdivision (a) (lewd act on a child under 14 years of age). It was further alleged the charged crimes were committed through use of force, violence, duress, menace, and fear of immediate and unlawful bodily injury, within the meaning of section 1203.066, subdivision (a)(1), precluding eligibility for probation.

The case was sent out for trial and after rulings on in limine motions defendant agreed to a negotiated disposition pursuant to which he pled no contest to one count of violating section 288, subdivision (a) (committing a lewd act on a child under 14 years of age), a registerable offense under section 290. Following the taking of defendant's plea, the matter was continued for sentencing.

At the sentencing hearing, defense counsel stated defendant claimed he was not ready to proceed because of "problems" with the plea form. Defense counsel confirmed no motion to continue had been filed and he (defense counsel) was ready to proceed. The court directed defendant to confer with his attorney, reminded defendant he had

³ *Miranda v. Arizona* 384 U.S. 436.

knowingly and voluntarily entered his plea of no contest and found no good cause to delay sentencing. The court and defense counsel then confirmed the “85% term,” which apparently was defendant’s concern about the plea form, was for purposes of section 667.5, subdivision (c), limiting conduct credits for serious, violent felonies, which was applicable to the charge to which defendant had pled. Following an emotional statement on the record by Doe’s mother, the court sentenced defendant, pursuant to the negotiated disposition, to the midterm of six years in state prison.

III. DISCUSSION

Upon our independent review of the record we find no meritorious issues that require further briefing on appeal. Defendant was duly given his *Miranda* rights before providing a statement to the police, and the interview ceased when defendant requested counsel. Defendant completed all applicable portions of the plea form and signed it, and was duly advised by the court in connection with his no contest plea. The court made all required findings on the record to support the disposition. Defendant articulated no legitimate basis to withdraw his plea, and the court correctly found no good cause to delay sentencing.

IV. DISPOSITION

The judgment is affirmed.

Banke, J.

We concur:

Marchiano, P. J.

Dondero, J.